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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,862

05/18/2005

Jurgen Schiffmann

123898

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08/21/2008

OLIFF & BERRIDGE, PLC

P.O. BOX 320850

ALEXANDRIA, VA 22320-4850

EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,862	<b>Applicant(s)</b> SCHIFFMANN, JURGEN	
	<b>Examiner</b> Michael C. Miggins	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11, 12 and 14-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12 and 22-27 is/are allowed.
- 6) ☒ Claim(s) 11 and 14-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/5/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**REJECTIONS WITHDRAWN**

1. All of the 35 USC 112, 102 and 103 rejections have been withdrawn.

**REJECTIONS REPEATED**

2. There are no rejections repeated.

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen et al. (US 6541087) in view of Kuechler et al. (5324572).

Pophusen discloses a multilayer planar or tubular film having seven layers and having a layered structure of outside to inside of polyamide, EVOH, polyamide, polyolefin adhesive mixture with adhesion promoter, polyolefin, polyolefin adhesive mixture with adhesion promoter, polyamide (column 5, line 45 through column 6, line 38, column 7, lines 7-10, column 9, lines 15-45 (Ex. 1-2)).

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Pohusen discloses that the layers of polyolefin contain additional polyolefins, polypropylene etc., layers containing polyamide contain MXD6, wherein the polyamide layers contain PA 6, 66, 6/66, 11, 12 etc. (column 6, line 38, column 7, lines 7-10).

Pophusen fails to disclose that the barrier layer is PVOH instead of EVOH.

Kuechler discloses the use of PVOH instead of EVOH as a gas barrier for the purpose of providing improved barrier properties and lower costs (column 1, line 20 through column 2, line 27).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have used PVOH instead of EVOH as a gas barrier in the invention of Pophusen in order to provide improved barrier properties and lower costs.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen et al. (US 6541087) in view of Kuechler et al. (5324572), as applied to claims 11, 14 and 19-20 above, and further in view of Tajiri et al. (US 6177159).

Pophusen fails to disclose wherein the barrier layer alternatively contains MXD6.

Tajiri discloses a barrier layer which contains MXD6 (column 2, lines 30-35) in a food container (column 1, lines 5-10) for the purpose of providing improved oxygen gas barrier properties.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the barrier layer contains

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MXD6 in Blok in order to provide improved oxygen gas barrier properties as taught or suggested by Tajiri.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen et al. (US 6541087) in view of Kuechler et al. (5324572), as applied to claims 11, 14 and 19-20 above, and further in view of Lulham et al. (US 5595623).

Pophusen fails to disclose that the polyamide layer alternatively contain an ionomer.

Lulham discloses a barrier layer with ionomer layers bonded to both surfaces of the barrier layer (column 4, line 35 through column 5, line 11) in a food container (column 1, lines 10-22) for the purpose providing improved barrier properties and/or mechanical properties.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided that the polyamide layer alternatively contain an ionomer in Blok in order to provide improved barrier properties and/or mechanical properties as taught or suggested by Lulham.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: Claim 21 is dependent upon parent claim 12 which does not contain polyolefin, where in the structure is the polyolefin located since polyolefin has been excluded from the structure in claim 12.

***Allowable Subject Matter***

9. Claims 12 and 22-27 are allowed since the prior art does not disclose applicant's recited 7 layer casing.

**ANSWERS TO APPLICANT'S ARGUMENTS**

10. Applicant's arguments of 5/5/08 have been carefully considered but are deemed unpersuasive.

Applicant has argued that Pophusen and Kuechler are not properly combined since Kuechler discloses highly hydrolyzed PVA and not PVA as recited in the claims. However, applicant makes no distinction whatsoever in the claims with regard to hydrolyzed or unhydrolyzed PVA. Therefore, any PVA whether hydrolyzed or

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unhydrolyzed reads on the claim 11 since applicant merely recites PVA. Kuechler may in fact teach away from unhydrolyzed PVA but Kuechler recites many advantages of using hydrolyzed PVA as discussed in the rejections above.

### ***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/  
Primary Examiner, Art Unit 1794

MCM  
August 18, 2008